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15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA

17 ACADEMY OF MOTION PICTURE
18 ARTS AND SCIENCES, a California
19 nonprofit corporation,

20 Plaintiff,

21 v.

22 GODADDY.COM, INC., a Delaware
23 corporation, and GODADDY.COM,
24 LLC, a Delaware limited liability
25 company,

26 Defendants.

Case No: CV-13-08458-ABC (CWx)

**PLAINTIFF'S OBJECTIONS TO
THE AFFIDAVIT OF NIMA
KELLY IN SUPPORT OF MOTION
TO RECUSE THE HON. AUDREY
B. COLLINS**

Date: February 3, 2014

Time: 9:00 a.m.

Dept: 840

Judge: Hon. Dale Fischer

1 Plaintiff ACADEMY OF MOTION PICTURE ARTS AND SCIENCES
 2 (“Academy” or “AMPAS”) hereby objects to and moves to strike, in whole or in
 3 part, the affidavit of Nima Kelly and exhibits attached thereto by Defendant
 4 GODADDY.COM, INC. (“GoDaddy”) in support of its Motion to Recuse Hon.
 5 Audrey B. Collins (“Motion”).

6 **I. GENERAL EVIDENTIARY RULES**

7 FRE 602: “A witness may not testify to a matter unless evidence is
 8 introduced sufficient to support a finding that the witness has personal knowledge
 9 of the matter.”

10 FRE 408: Evidence of furnishing, promising, or offering a valuable
 11 consideration in compromising or attempting to compromise the claim or conduct
 12 or a statement made during compromise negotiations are not admissible either to
 13 prove or disprove the validity or amount of a disputed claim.

14 Local Rule (L.R.) 7-7: *Form and Content of Declarations.* “Declarations
 15 shall contain only factual, evidentiary matter and shall conform as far as possible
 16 to the requirements of F.R.Civ.P. 56(c)(4).
 17

18 Cal. Evid. Code 1119: No evidence of anything said for the purpose of, in
 19 the course of, or pursuant to a mediation or a mediation consultation is admissible
 20 or subject to discovery. All communications, negotiations, or settlement
 21 discussions by and between participants in the course of a mediation or a
 22 mediation consultation shall remain confidential.

23 *Folb v. Motion Picture Industry Pension & Health Plans*, 16 F. Supp.2d
 24 1164, 1180 (9th Cir. 1998): “Communications to the mediator and
 25 communications between parties during mediation are protected.”

26 **II. EVIDENTIARY OBJECTIONS**

27 AMPAS hereby objects to the Affidavit of Nima Kelly (“Kelly Affidavit”),
 28 submitted by GoDaddy in support of its Motion to Recuse Hon. Audrey B.

Collins, in its entirety. This declaration is replete with (1) information of which the declarant lacks personal knowledge; (2) privileged communications, in violation of FRE 408 and Cal.Evid.Code 1119; and (3) nonfactual, nonevidentiary matter that violates Local Rule 7-7. Thus, the Kelly Affidavit should be disregarded by the Court in its entirety.

In addition to these general objections to the declaration in its entirety, AMPAS makes the following specific objections to specific portions of the declaration.

III. SPECIFIC OBJECTIONS

Lacks Personal Knowledge

AMPAS objects to the admissibility of Paragraphs 5, 7, 14, 16, 17, 18, 20, and 21 on the grounds that Ms. Kelly lacks personal knowledge and is thus speculating as to the contents of these paragraphs, in violation of FRE 602.

Violation of Settlement Privilege

AMPAS objects to Paragraphs 19, 21, 23, 24, 25 and 26 and Exhibits C, D and E, based on violation of the settlement privilege. The information included in Paragraphs 19, 21, 23, 24, 25 and 26, including Exhibits C, D and E, violate the settlement communication protection set out in FRE 408. In fact, the parties expressly agreed that the meeting and discussions referenced in Paragraphs 19 and 21 were subject to FRE 408. The letter referenced in Paragraph 23 (Exhibit C) states explicitly “Rule 408 Confidential Settlement Communication” in the subject line, and the letter referenced in Paragraph 24 (Exhibit D) is a response to the settlement communication in Exhibit C. The letter referenced in Paragraph 25 (Exhibit E) “encouraged GoDaddy to settle the case.” Thus, AMPAS objects to the admissibility of these paragraphs and exhibits on the grounds that they violate

the settlement privilege codified in FRE 408.

Violation of Mediation Privilege

AMPAS objects to Paragraphs 22 and 26 based on violation of the mediation privilege. The information included in Paragraphs 22 and 26 refers to confidential mediation communications that took place at a formal mediation in March 2013. Prior to the mediation, all counsel and all parties present signed the standard JAMS confidentiality form for mediations. Thus, AMPAS objects to the admissibility of Paragraphs 22 and 26 on the grounds that the content therein violates the parties' JAMS confidentiality agreement, the local rules of this Court, Cal. Evid. Code Sections 1115-1128, and Ninth Circuit case law (*see Folb v. Motion Picture Industry Pension & Health Plans*, 16 F. Supp. 1164, 1180 (9th Cir. 1998)).

Violation of Local Rule 7-7

AMPAS objects to the admissibility of the contents of Paragraphs 14, 16, 18, 21, 28, 29, 31, and 33 on the grounds that it violates Local Rule 7-7, in that it fails to set forth "only factual, evidentiary matter" and instead includes Ms. Kelly's speculative opinions.

DATED: January 13, 2014

/s/ Enoch Liang

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